

## EXHIBIT “A”

14-0015243-001  
AN

TPA-0752

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF NEW YORK

ACCEPTED FOR MTA ONLY

M.T.A. General Counsel

KRYSTOPHER S. RAMOS

Plaintiff,

Received  
Date: 7/22/16 Time: 3:49 PMMail ☐ Personal ☒ *Letter*

SUMMONS

Index No: 651619-2016

Date filed: 3/25/16

**ENTERED**

against-

CITY OF NEW YORK and METROPOLITAN  
TRANSPORTATION AUTHORITY and NEW  
YORK CITY TRANSIT AUTHORITY and M.T.A  
POLICE DEPARTMENT

Defendants.

To the above named Defendants:

LIPR  
LAW DEPARTMENT

2016 AUG 22 D 15

**YOU ARE HEREBY SUMMONED** and required to serve upon plaintiff's attorney an answer to the complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

2016 AUG 22 D 311

Dated: Newburgh, New York  
March 22, 2016

*[Signature]*  
Bruce C. Dunn, Jr. Esq.  
Law Office of Bruce C. Dunn, Jr., Esq.  
67 South Plank Road  
Newburgh, NY 12550  
Phone: (845) 304-7382  
Facsimile: (845) 477-1125

2016 AUG 22 D 311  
LIPR  
LAW DEPARTMENT

Pursuant to CPLR 503 (a), venue can be any county designated by the plaintiff as an out of state resident.

8-19-16

Given to K. McCaffrey in person by David Silverberg  
@ Transit *[Signature]*

ACCEPTED FOR MTA ONLY

STATE OF NEW YORK  
SUPREME COURT COUNTY OF NEW YORK

KRYSTOPHER S. RAMOS

Plaintiff,

Date: 7/22/16 3:48 PM  
Mail 12  
Clerk

ENTERED

-against-

CITY OF NEW YORK and METROPOLITAN,  
TRANSPORTATION AUTHORITY and NEW  
YORK CITY TRANSIT AUTHORITY and M.T.A  
POLICE DEPARTMENT

COMPLAINT  
Index No: 65 1619-2016

Defendants.

Plaintiff, Krystopher S. Ramos, by his attorney, Bruce Dunn, Jr., Esq.,  
complaining of defendant, alleges the following upon information and belief:

1. At all times hereinafter mentioned, defendant, the City of New York (the  
"City"), was a municipal corporation duly organized and existing pursuant to the laws  
of the State of New York.

2. At all times hereinafter mentioned, the City maintained a police  
department.

3. Upon information and belief, that at all times relevant hereto, the City  
assumed and maintained responsibility, supervision, control, and authority over the  
police department, its agents, servants and employees, and is liable to plaintiff for the  
acts complained of herein under the theories of vicarious liability and respondeat  
superior.

4. At all times hereinafter mentioned, defendant, the METROPOLITAN  
TRANSPORTATION AUTHORITY (the "MTA"), was a municipal corporation duly  
organized and existing pursuant to the laws of the State of New York.

RECEIVED  
CLERK  
2016 AUG 22 PM 3:48

5. At all times hereinafter mentioned, defendant, the NEW YORK CITY TRANSIT AUTHORITY (the "TRANSIT AUTHORITY"), was a municipal corporation duly organized and existing pursuant to the laws of the State of New York.

6. At all times hereinafter mentioned, defendant, the M.T.A. POLICE DEPARTMENT (the "MTA POLICE"), was a municipal corporation duly organized and existing pursuant to the laws of the State of New York.

7. A notice of claim was served upon the City, on March 25, 2015 within 90 days of the occurrence and/or accrual of the cause of action.

8. More than 30 days have elapsed since presentation of the claim, and the City has failed to adjust and/or dispose of the claim presented therein.

9. This action is commenced within one year and 90 days of the date of the incident and/or accrual of the cause of action.

10. The limitations on liability set forth in CPLR §1601 do not apply to this action.

11. The limitations on liability set forth in CPLR §1601 do not apply to this action by reason of one or more of the exemptions set forth in CPLR 1602.

#### **FIRST CAUSE OF ACTION**

12. Plaintiffs repeat, reiterate and reallege the allegations contained in paragraphs 1 through 8 herein as if more fully set forth at length.

13. On December 27, 2014, plaintiff was lawfully on the premises of One Penn Plaza, New York, New York, when members of the police department of the City (the "police department") responded to that location.

14. Plaintiff was, without cause or provocation, falsely arrested and imprisoned at Midtown Precinct South, 357 W 35th St, New York, NY, otherwise

known as Precinct 014 without warrant, authority of law or probable cause therefor.

15. That the acts and conduct constituting the false arrest and false imprisonment consisted in part of the following: unlawfully and intentionally detaining and confining plaintiff against his will and without his consent; unlawfully and intentionally detaining and confining plaintiff without privilege, probable cause or valid legal process; unlawfully detaining and confining plaintiff through the unlawful arrest of plaintiff; unlawfully detaining and confining plaintiff through the use of force; unlawfully arresting plaintiff and placing plaintiff in handcuffs without reasonable cause therefor, and committing such other acts resulting in the unlawful arrest and imprisonment of plaintiff.

16. That plaintiff was conscious of the false arrest and confinement.

17. That as a direct, sole and proximate result of the false arrest and imprisonment, plaintiff was caused to and did sustain humiliation and embarrassment, emotional and mental distress, moral and mental degradation, indignity and disgrace, injury to personal and business reputation, inconvenience, disturbance and disruption of life, legal expenses, and loss of personal and business income.

18. As a result of the foregoing, plaintiff sustained severe and serious personal injuries and other consequential damages.

19. As a result of the foregoing, plaintiff has been damaged in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

#### **SECOND CAUSE OF ACTION**

20. Plaintiffs repeat, reiterate and reallege the allegations contained in paragraphs 1 through 19 herein as if more fully set forth at length.



21. The aforementioned occurrence took place by reason of the negligence of the City and/or the additional named Defendants, its agents, servants and/or employees, including various police officers.

22. The police officers were careless, reckless and negligent in conducting and performing police duties, including, in part, the negligent use of force in detaining, arresting and confining plaintiff; carelessly, recklessly and negligently investigating the civil complaint leading up to plaintiff's arrest and confinement; violating established rules, procedures and policies; and negligently employing, supervising and training members of the police force.

23. That as a direct, sole and proximate result of the carelessness, recklessness and negligence of the defendant, its agents, servants and/or employees, plaintiff was caused to and did sustain serious, disabling and permanent personal injuries, pain and suffering, humiliation and embarrassment, emotional and mental distress, inconvenience, medical expenses, and loss of personal and business income.

24. That plaintiff's injuries and damages were caused solely by reason of the defendants' culpable conduct, as stated herein, without any fault or negligence on the part of plaintiff contributing thereto.

25. As a result of the foregoing, plaintiff sustained severe and serious personal injuries and other consequential damages.

26. As a result of the foregoing, plaintiff has been damaged in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

### **THIRD CAUSE OF ACTION**

27. Plaintiffs repeat, reiterate and reallege the allegations contained in paragraphs 1 through 26 herein as if more fully set forth at length.

28. The City and/or the additional defendants maliciously prosecuted criminal charges against plaintiff.

29. As a result of the foregoing, plaintiff was caused to and did sustain humiliation and embarrassment, emotional and mental distress, moral and mental degradation, indignity and disgrace, injury to personal and business reputation, inconvenience, disturbance and disruption of life, legal expenses, and loss of personal and business income. As a result of the foregoing, plaintiff sustained severe and serious personal injuries and other consequential damages.

30. As a result of the foregoing, plaintiff has been damaged in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

#### **FOURTH CAUSE OF ACTION**

31. Plaintiffs repeat, reiterate and reallege the allegations contained in paragraphs 1 through 30 herein as if more fully set forth at length

32. The Defendants, its agents, servants and/or employees, acting under color of law, deprived plaintiff of his state constitutional rights, including the right to due process of law, freedom of speech and security against unreasonable searches and seizures.

33. That as a result of the foregoing, plaintiff has been injured and damaged in an amount which exceeds the jurisdiction of all lower Courts otherwise having jurisdiction.

#### **FIFTH CAUSE OF ACTION**

34. Plaintiffs repeat, reiterate and reallege the allegations contained in paragraphs 1 through 33 herein as if more fully set forth at length.

35. The aforementioned occurrence constituted an invasion of the privacy of plaintiff.

36. That as a result of the foregoing, plaintiff was caused to and did sustain humiliation and embarrassment, emotional and mental distress, moral and mental degradation, indignity and disgrace, injury to personal and business reputation, inconvenience, disturbance and disruption of life, legal expenses, and loss of personal and business income.

37. As a result of the foregoing, plaintiff sustained severe and serious personal injuries and other consequential damages.

38. As a result of the foregoing, plaintiff has been damaged in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

#### **SIXTH CAUSE OF ACTION**

39. Plaintiffs repeat, reiterate and reallege the allegations contained in paragraphs 1 through 38 herein as if more fully set forth at length.

40. As a result of the aforementioned occurrence, plaintiff was deprived of his civil rights under the Constitution of the State of New York and the Constitution of the United States, as well as other State ordinances statutes, codes and rules, including 42 U.S.C.A. §§ 1981, 1983, 1985 and 28 U.S.C.A. § 1343.

41. That as a result of the foregoing, plaintiff was caused to and did sustain humiliation and embarrassment, emotional and mental distress, moral and mental degradation, indignity and disgrace, injury to personal and business reputation,



inconvenience, disturbance and disruption of life, legal expenses, and loss of personal and business income.

42. As a result of the foregoing, plaintiff sustained severe and serious personal injuries and other consequential damages.

43. As a result of the foregoing, plaintiff has been damaged in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

WHEREFORE, plaintiff demands judgment against defendant on each of the aforementioned Causes of Action in an amount in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought, together with attorneys' fees pursuant to 42 U.S.C.A. § 1988, the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: Newburgh, New York  
March 22, 2016

  
Bruce C. Dunn, Jr. Esq.

Bruce C. Dunn, Jr., Esq.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Index No:

KRYSTOPHER S. RAMOS,

Plaintiff,

~~against~~

CITY OF NEW YORK and METROPOLITAN  
TRANSPORTATION AUTHORITY and NEW  
YORK CITY TRANSIT AUTHORITY and M.T.A  
POLICE DEPARTMENT,

Defendants.

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SUMMONS AND VERIFIED COMPLAINT

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Bruce C. Dunn, Jr., Esq.  
Law Office of Bruce C. Dunn, Jr., Esq.  
Attorney for Defendants  
67 South Plank Road  
Newburgh, New York 12550  
Telephone: (845) 304-7382

Pursuant to 22 NYCRR 130-1.1, the undersigned, an Attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: March 22, 2016

Signature: .....

Print Signer's Name: BRUCE C. DUNN, JR.

Service of a copy of the within Summons and Verified Complaint is hereby admitted.

Dated:

.....  
Attorney(s) for Defendant

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PLEASE TAKE NOTICE

— that the within is a (certified) true copy of a Summons and Verified Complaint entered in the office of the Clerk of the within-named Court on March , 2016.

Dated: March 22, 2016

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
Krystopher S Ramos

Plaintiff/Petitioner,

-against-

Index No. 651619-2016

City of New York et al

Defendant/Respondent.  
-----x

**NOTICE OF COMMENCEMENT OF ACTION  
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as required by CPLR § 2111 and Uniform Rule § 202.5-bb (mandatory electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are served automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

**Parties represented by an attorney:** An attorney representing a party who is served with this notice must either: 1) immediately record his or her representation within the e-filed matter on the NYSCEF site; or 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements. [Section 202.5-bb(e)]

**Parties not represented by an attorney:** Unrepresented litigants are exempt from e-filing. They can serve and file documents in paper form and must be served with documents in paper form. However, an unrepresented litigant may participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit [www.nycourts.gov/efileunrepresented](http://www.nycourts.gov/efileunrepresented). Unrepresented litigants also are encouraged to visit [www.nycourthelp.gov](http://www.nycourthelp.gov) or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: [efile@nycourts.gov](mailto:efile@nycourts.gov)).

Dated: 03/25/2016

\_\_\_\_\_  
Signature

BRUCE CARPENTER DUNN  
\_\_\_\_\_  
Name

B. DUNN LAW OFFICE, P.C.  
\_\_\_\_\_  
Firm Name

67 South Plank Road  
\_\_\_\_\_  
Address

NEWBURGH, NY 12550  
\_\_\_\_\_  
City, State, and Zip

(845) 565-4077  
\_\_\_\_\_  
Phone

bruce@bdunnlawoffice.com  
\_\_\_\_\_  
E-Mail

To: MTA Police  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9/3/15

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X Index No. 651619/2016

KRYSTOPHER S. RAMOS,

Plaintiff,

-against-

ANSWER

CITY OF NEW YORK and METROPOLITAN  
TRANSPORTATION AUTHORITY and NEW  
YORK CITY TRANSIT AUTHORITY and M.T.A.  
POLICE DEPARTMENT,

Defendants.

-----X

Defendants, METROPOLITAN TRANSPORTATION AUTHORITY and NEW YORK CITY TRANSIT AUTHORITY and M.T.A. POLICE DEPARTMENT (“MTA”), by their attorneys, BEE READY FISHBEIN HATTER & DONOVAN, LLP, as and for their Answer to Plaintiff’s Verified Complaint, set forth as follows:

1. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph “1” of the Verified Complaint.
2. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph “2” of the Verified Complaint.
3. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph “3” of the Verified Complaint.
4. Admit as to each and every allegation contained in Paragraph “4” of the Verified Complaint.
5. Admit as to each and every allegation contained in Paragraph “5” of the Verified Complaint.



6. Deny each and every allegation contained in Paragraph “6” of the Verified Complaint.

7. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph “7” of the Verified Complaint.

8. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph “8” of the Verified Complaint.

9. Deny each and every allegation contained in Paragraph “9” of the Verified Complaint and respectfully refers all questions of law to the within Court for ultimate determination.

10. Deny each and every allegation contained in Paragraph “10” of the Verified Complaint and respectfully refers all questions of law to the within Court for ultimate determination.

11. Deny each and every allegation contained in Paragraph “11” of the Verified Complaint and respectfully refers all questions of law to the within Court for ultimate determination.

**ANSWERING THE FIRST CAUSE OF ACTION**

12. Repeats and re-alleges each and every admission and denial contained in paragraphs of the Verified Complaint numbered “12” as it relates to paragraphs numbered “1” through “11” with the same force and effect as if fully set forth at length herein.

13. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph “13” of the Verified Complaint.

14. Deny each and every allegation contained in Paragraph “14” of the Verified Complaint.

15. Deny each and every allegation contained in Paragraph “15” of the Verified Complaint.

16. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph “16” of the Verified Complaint.

17. Deny each and every allegation contained in Paragraph “17” of the Verified Complaint.

18. Deny each and every allegation contained in Paragraph “18” of the Verified Complaint.

19. Deny each and every allegation contained in Paragraph “19” of the Verified Complaint.

**ANSWERING THE SECOND CAUSE OF ACTION**

20. Repeats and re-alleges each and every admission and denial contained in paragraphs of the Verified Complaint numbered “20” as it relates to paragraphs numbered “1” through “19” with the same force and effect as if fully set forth at length herein.

21. Deny each and every allegation contained in Paragraph “21” of the Verified Complaint.

22. Deny each and every allegation contained in Paragraph “22” of the Verified Complaint.

23. Deny each and every allegation contained in Paragraph “23” of the Verified Complaint.

24. Deny each and every allegation contained in Paragraph “24” of the Verified Complaint.

25. Deny each and every allegation contained in Paragraph “25” of the Verified Complaint.

26. Deny each and every allegation contained in Paragraph “26” of the Verified Complaint.

**ANSWERING THE THIRD CAUSE OF ACTION**

27. Repeats and re-alleges each and every admission and denial contained in paragraphs of the Verified Complaint numbered “27” as it relates to paragraphs numbered “1” through “26” with the same force and effect as if fully set forth at length herein.

28. Deny each and every allegation contained in Paragraph “28” of the Verified Complaint.

29. Deny each and every allegation contained in Paragraph “29” of the Verified Complaint.

30. Deny each and every allegation contained in Paragraph “30” of the Verified Complaint.

**ANSWERING THE FOURTH CAUSE OF ACTION**

31. Repeats and re-alleges each and every admission and denial contained in paragraphs of the Verified Complaint numbered “31” as it relates to paragraphs numbered “1” through “30” with the same force and effect as if fully set forth at length herein.

32. Deny each and every allegation contained in Paragraph “32” of the Verified Complaint.

33. Deny each and every allegation contained in Paragraph “33” of the Verified Complaint.

**ANSWERING THE FIFTH CAUSE OF ACTION**

34. Repeats and re-alleges each and every admission and denial contained in paragraphs of the Verified Complaint numbered “34” as it relates to paragraphs numbered “1” through “33” with the same force and effect as if fully set forth at length herein.

35. Deny each and every allegation contained in Paragraph “35” of the Verified Complaint.

36. Deny each and every allegation contained in Paragraph “36” of the Verified Complaint.

37. Deny each and every allegation contained in Paragraph “37” of the Verified Complaint.

38. Deny each and every allegation contained in Paragraph “38” of the Verified Complaint.

**ANSWERING THE SIXTH CAUSE OF ACTION**

39. Repeats and re-alleges each and every admission and denial contained in paragraphs of the Verified Complaint numbered “39” as it relates to paragraphs numbered “1” through “38” with the same force and effect as if fully set forth at length herein.

40. Deny each and every allegation contained in Paragraph “40” of the Verified Complaint and respectfully refers all questions of law to the within Court for ultimate determination.

41. Deny each and every allegation contained in Paragraph “41” of the Verified Complaint.

42. Deny each and every allegation contained in Paragraph “42” of the Verified Complaint.

43. Deny each and every allegation contained in Paragraph “43” of the Verified Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

44. Whatever injuries and/or damages plaintiff(s) may have sustained at the time and place alleged in the Verified Complaint, were caused in whole or in part or were contributed to

by the it culpable conduct and negligence and/or fault and/or want of care and/or intentional conduct on the part of the plaintiff, including contributory negligence, and without any negligence or fault or want of care on the part of these answering Defendants and that the amount of damages which may be recovered by the Plaintiff shall be diminished in proportion to which his culpable conduct caused said damages.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

45. Defendant MTA is not subject to an award of exemplary or punitive damages.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

46. Defendants MTA acted in good faith and with probable cause and justification in the detention, and imprisonment of the Plaintiff and therefore no claim lies against them in the conduct of their duties.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

47. That Defendants MTA enjoy a qualified immunity with respect to those acts that are performed pursuant to their duties and responsibilities as police officers in the State of New York.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

48. Pursuant to the laws of the State of New York, including the Criminal Procedure Law of the State of New York, § 140.05 et. seq., MTA police officers acted reasonably, properly and under the law in the alleged stop, detention and arrest of the Plaintiff.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

49. That the actions of the MTA police officers were justified; and that the use of any force, which is denied by the Defendant MTA, was justified, necessary and reasonable under the law of the State of New York and the circumstances of the arrest and detention.

**AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE**

50. That the arrest and detention of the Plaintiff was justified under the Penal Law and Criminal Procedure Law of the State of New York in that the arresting officer had reasonable probable cause for believing that crimes had been committed and that the Plaintiff had committed said crimes.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

51. That notwithstanding any favorable termination for the criminal proceeding, if any, the Plaintiff was in fact guilty of the offense with which he was charged.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

52. Under the Court's supplemental jurisdiction pursuant to the law of the State of New York, Plaintiff has failed to state a claim for deprivation of federal rights, malicious prosecution, abuse of process, and excessive force, in whole or in part, upon which relief may be granted.

**AS AND FOR AN TENTH AFFIRMATIVE DEFENSE**

53. That the MTA is not liable for any alleged violations of the Plaintiff's Federal Constitutional rights for the alleged actions of its employees were not the custom, practice, police or procedure of the MTA, and as such the MTA is entitled to dismissal of the Plaintiff=s Verified Complaint pursuant to the authority of *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978).

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

54. That these answering defendants acting under the scope, authority and protection of the General Business Law, Article 12(b), Section 218, and that by reason thereof, the Plaintiff may not maintain this action.



**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

55. Upon information and belief, any past or future costs and/or expenses incurred or to be incurred by the Plaintiff for medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in section 4545(c) of the CPLR.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

56. If any damages are recoverable against the answering Defendants, the amount of such damages shall be diminished by the amount of the funds which Plaintiff has received or shall receive from such collateral source.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

57. Any injuries suffered by Plaintiff were not caused by a negligent or wrongful act or omission of Defendants or any individual acting under their direction or control.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

58. Plaintiff's Verified Complaint must be dismissed, in whole or in part, for failure to state a cause of action upon which relief may be granted.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

59. Plaintiff's claims must be dismissed because they are barred by the applicable Statute of Limitations.

**AS AND FOR AN SEVENTEENTH AFFIRMATIVE DEFENSE**

60. Plaintiff's claims against all Defendants are frivolous.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

61. Plaintiff's 42 U.S.C. § 1983 claims fail to state a cause of action and are frivolous.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

62. Plaintiff's claims are barred on the ground that Plaintiff's conduct violated applicable state criminal laws.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

63. Any criminal proceeding against Plaintiff commenced or participated in by Defendants was based upon probable cause and was not due to malice.

**AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

64. At all times, an objective officer of reasonable competence would have had probable cause to believe a crime had been committed or that he was otherwise justified in searching and detaining Plaintiff.

**AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE**

65. If Defendants MTA are held liable in this action, then any possible damages award should be apportioned so that Defendants MTA are not responsible for the wrongdoing of the non- parties that Plaintiff has failed to include in this action.

**AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE**

66. Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Verified Complaint.

**AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE**

67. Upon information and belief, in the event Plaintiff recovers at time of trial against Defendants MTA, such recovery for non-economic loss shall not exceed Defendants' MTA equitable share determined in accordance with the relative culpability of each person, party and/or entity, which caused or contributed to the total liability for non-economic loss; provided that the liability of the Defendants MTA are found to be fifty percent or less of the total liability of all persons, parties and/or entitles liable.

**AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE**

68. Upon information and belief, that the injury or injuries, if any, sustained by the Plaintiff at the time and place, or on the occasion referred to in the Plaintiff's Verified Complaint, were sustained or so suffered or caused, in whole or in part, by the negligent act or acts and/or assumption of risk of the Plaintiff, and the damages recoverable by Plaintiff, if any, shall be diminished in the proportion which the culpable conduct attributable to the Plaintiff bears to the culpable conduct which caused the damages.

**AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE**

69. Upon information and belief, these answering Defendants MTA are free from any negligence and in no way contributed to the occurrence and injuries referred to in the Plaintiff's Verified Complaint.

**AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

70. That answering Defendants MTA are entitled to qualified immunity as to any actions alleged since their conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have been aware based upon an objective reasonable assessment of the conduct measured in reference to clearly established law.

**AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

71. That the Verified Complaint fails to set forth facts sufficient to constitute a deprivation of any constitutional right or other basis for a civil rights claim.

**AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE**

72. Upon information and belief, this Court lacks jurisdiction over the subject matter of this cause of action.

**AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE**

73. Upon information and belief, this Court lacks jurisdiction over these answering Defendants based upon the allegations in the Verified Complaint.

**AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE**

74. That the MTA Police Department is not an entity susceptible to suit. *See, e.g., Wilson v. City of New York*, 800 F. Supp. 1098, 1101 (EDNY 1992).

**AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE**

75. That the answering Defendants, at all times complained of, acted reasonably and in good faith in the discharge of their official duties and responsibilities.

**AS AND FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE**

76. That the answering Defendants acted in what they did solely pursuant to their duties and responsibilities as law enforcement and/or prosecuting officials.

**AS AND FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE**

77. That the answering Defendants at all times acted in good faith in that they reasonably believed that they were exercising and acting within their statutory and constitutional powers.

**AS AND FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE**

78. That in performing such duties and responsibilities, the answering Defendants are and were protected by absolute and/or qualified Federal and/or State immunity.

**AS AND FOR A THIRTY-SIXTH AFFIRMATIVE DEFENSE**

79. Plaintiff lacks capacity to bring this suit.

**AS AND FOR A THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

80. Plaintiff lacks standing to bring the instant action.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST THE CO-DEFENDANTS,  
THESE ANSWERING DEFENDANTS ALLEGE**

81. That if the Plaintiff sustained injury and damage as alleged in the Complaint by reason of fault other than his own, and judgment is recovered against these answering Defendants, then the liability of said Defendants will have been brought about by reason of the primary culpable conduct of the Co-Defendants, THE CITY OF NEW YORK, a municipal entity, without any such culpable conduct on the part of these answering Defendants who are thereby entitled to indemnity for all or part of any such judgment and in such amount as shall be determined ultimately at the trial of this action.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST THE CO-DEFENDANTS,  
THESE ANSWERING DEFENDANTS ALLEGE**

82. That in the event that the Plaintiff's injuries were not caused solely by the primary culpable conduct of Defendants, THE CITY OF NEW YORK, a municipal entity, thus entitling these answering Defendants to indemnification, then the culpable conduct of Co-Defendants, THE CITY OF NEW YORK, a municipal entity, contributed to such injuries. Thus, pursuant to CPLR 1402 and 1403, these answering Defendants shall have contribution from Co-Defendants, THE CITY OF NEW YORK, a municipal entity, for any amount which they are required to pay in excess of these answering Defendants' equitable share of all parties responsible in such amounts as will be determined by this Court.

**WHEREFORE,** Defendants, METROPOLITAN TRANSPORTATION AUTHORITY and NEW YORK CITY TRANSIT AUTHORITY and M.T.A. POLICE DEPARTMENT demand judgment dismissing the Verified Complaint against it, together with costs and disbursements, and for such other relief as the Court may deem just and proper.

Dated: Mineola, New York  
September 2, 2016

Respectfully yours,  
**BEE READY FISHBEIN  
HATTER & DONOVAN, LLP**

By: /S/  
 Andrew K. Preston (AP-5857)  
*Attorneys for Defendants, METROPOLITAN  
 TRANSPORTATION AUTHORITY and  
 NEW YORK CITY TRANSIT AUTHORITY  
 and M.T.A. POLICE DEPARTMENT*  
 170 Old Country Road, Ste. 200  
 Mineola, New York 11501  
 T. 516-746-5599 – F. 516-746-1045  
 File No.: 6178-1501

**TO: LAW OFFICE OF BRUCE C. DUNN, JR., ESQ.**  
*Attorney for Plaintiff*  
67 South Plank Road  
Newburgh, NY 12550  
(845) 304-7382





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**651619/2016**

**Assigned Judge: None Recorded**

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